

APPROVED MINUTES  
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	January 4, 2005
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

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**ROLL CALL**

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmembers Giordano, Livengood, and Polanski.

**CLOSED SESSION**

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda.

- 1. Conference with Labor Negotiators**  
(Pursuant to Government Code Section 54957.6)  
Agency Designated Representatives: Steve Mattas and Cherie Rosenquist  
Employee Organization: Milpitas Employee Association
- 2. Conference with Legal Counsel - Existing Litigation**  
(Pursuant to Government Code Section 54956.9(a))  
Name of Case: Palmer v. City of Milpitas WCAB SFO 195446, 0426361, 0467998
- 3. Conference with Real Property Negotiators**  
(Pursuant to Government Code Section 54956.8)  
Properties: Calvary Assembly of God - APN Nos. 092-37-044,045, and 046 Pak - APN No. 092-37-032  
Agency Negotiators: Mike McNeely and Greg Armendariz  
Negotiating Parties: City of Milpitas, Calvary Assembly of God, and Pak  
Under Negotiation: Terms and conditions for acquisition of property
- 4. Public Employee Appointment/Public Employment**  
(Pursuant to Government Code Section 54957)  
Title: City Manager

Mayor Esteves adjourned the meeting to closed session 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Gomez and Councilmembers Giordano, Livengood, and Polanski present.

**CLOSED SESSION  
ANNOUNCEMENTS**

There were no closed session announcements.

**PLEDGE**

Members of Troop 92 led the Council and audience in the pledge of allegiance.

**MINUTES**

MOTION to approve the Special City Council minutes of December 14, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Giordano	Ayes: 4	Abstain: 1 (Polanski)
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**SCHEDULE**

Acting City Manager Lawson reported the City/School District meeting scheduled for January 20, 2005, had been cancelled. Councilmember Polanski announced the 50<sup>th</sup> Anniversary Committee would be holding a meeting Thursday, January 6, 2005, at 7:00 p.m. when they will be reviewing the Time Capsule ceremony planned for January 26, 2005.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Polanski.

Ayes: 5

## **PRESENTATIONS**

Mayor Esteves presented a Certificate of Appointment to Kathryn Manento, who was recently appointed Alternate No. 2 on the Senior Advisory Commission. Ms. Manento thanked Mayor Esteves and the Council for appointing her to the Senior Advisory Commission, thanked staff for bringing her up to speed in the knowledge of the work to be done, and introduced family and friends present in the audience.

Mayor Esteves read a proclamation proclaiming January 2005 as "Volunteer Blood Donor Month" and presented it to Cynthia Carlson from the Red Cross. Ms. Carlson thanked the Council for acknowledging the Red Cross and thanked the City for sponsoring three to four blood drives each year.

## **CITIZENS FORUM**

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

Mr. Patel, a volunteer from the local Hindu Temple, said a colleague of his would be making a presentation on their efforts to address the Tsunami tragedy. A volunteer of BAPS Care International in Milpitas, a non-religious organization, presented information about the relief activities being conducted for the Tsunami victims, and appealed to people all over the world to help in this time of crisis and human need (i.e., donate on line at [www.bapsicare.org](http://www.bapsicare.org) or mail checks to 25 Corning Avenue, Milpitas, CA 95035).

## **ANNOUNCEMENTS**

Assistant City Manager Blair King introduced the City's new Chief Building Official Kevyan Irannejad. Mr. Irannejad outlined his vision for the Building Department and stated he was grateful for the opportunities provided him in this new position.

Councilmember Polanski expressed her appreciation to the BAPS Care International Tsunami Relief Fund organization for coming forth with information about the Tsunami relief efforts and stated she would like to adjourn the meeting in honor of all those trying to help the Tsunami victims and those who had passed. Councilmember Polanski further stated that Linda Rabe had been ill and was in ICU, and hoped everyone's thoughts and prayers would go to her; and thanked the Community for the condolences and comfort she received during the recent loss of her father. Councilmember Polanski said since she was unable to make the December 21, 2004, Council meeting, she had requested of the City Attorney's office ask her colleagues to delay the evaluation of the former City Manager Tom Wilson until this evening; unfortunately, that did not happen; so she wanted to say she would not have voted to accept his resignation; she enjoyed working with Mr. Wilson and felt his direction, leadership, and vision for Milpitas during his tenure was outstanding, and she believed Milpitas was where it was because of Mr. Wilson's vision, and commended Mr. Wilson for all he did for the City of Milpitas. Councilmember Polanski congratulated Assistant City Manager Blair King on his appointment as Lodi's new City Manager, commenting that Lodi was very fortunate to have him and his family.

Councilmember Giordano, referring to item 8, said she did not want to pull it off consent, but was concerned about the due date of December 30, 2004, and inquired if it was something that needed to be pulled off for discussion. Councilmember Giordano also asked that before adjourning to the 11<sup>th</sup> for Planning Commission interviews, she wanted to know what the format would be for the interviews and how it would be handled. Mayor Esteves said his understanding was the Planning Commission interviews would be Tuesday, January 11, 2005, at 6:00 p.m. in the Council Chambers; it had been agreed upon that after the interviews, each Councilmember would say yes or no to a candidate, and the candidate with the most yes votes would be selected. Councilmember Giordano inquired if the Councilmembers would be given questions to ask. Mayor Esteves stated he assumed that each member of the Council would have the freedom to ask their own questions.

Councilmember Livengood said he disagreed because that was not the direction the Council gave at the last meeting; the direction was not that Councilmembers would say yes or no to individual candidates, in fact, it was just the opposite of that; he wanted to get away from the ranking process, and the motion that was approved by the Council said that there would be a motion made and that a majority of the Council would dictate the three seats, so it was not a ranking or a “yes/no” because that was what he wanted to get away from.

Mayor Esteves reiterated that the Council would vote for each candidate and the candidate with the majority votes would be selected.

Councilmember Giordano, referring to Councilmember Polanski’s point regarding being unable to attend Closed Session or a meeting, inquired if it was possible to be a part of the body at a distance either by phone or telecommunications. City Attorney Steve Mattas explained that the Brown Act allowed for Councilmembers (less than a majority of the Council) to participate via teleconference or videoconference if those capabilities exist; it required that the agenda issued for the meeting list the remote location, the location be available to the public, and that it be noticed along with the standard notice that goes out for any agenda; that all has to be known in advance and reflected on the agenda; if that was all done, then a Councilmember who was out of the area could participate in a Council meeting.

Councilmember Giordano said she had been approached by members of the community to possibly look at designating some public entity in memory of Barbara Lee, and she would like to see this placed on the next agenda.

Mayor Esteves, referring to memorializing people, wanted to include on the agenda a discussion of what can be done to memorialize Neil MacKenzie; said he had additional information regarding helping those affected by the Tsunami disaster that he would pass on to staff for display on Channel 15; had received a letter from the Government Finance Officers Association stating the City of Milpitas had received the distinguished Budget Presentation Award for the current fiscal year, the award was the highest form of recognition in Governmental budgeting, and a Certificate of Recognition for Budget Presentation was also presented to the individual or department designated as being primarily responsible for having achieved this award. Mayor Esteves congratulated Finance Director Emma Karlen and thanked the Finance Department and everyone who helped in attaining this achievement, including former City Manager Tom Wilson; and stated at the next Council meeting, a formal presentation of the award would be made.

Mayor Esteves reported that for the second straight year, the City of Milpitas/Redevelopment Agency received an “AA” rating from Standard and Poor’s, which was the highest rating provided to a California city.

**ANNOUNCEMENT OF  
CONFLICT OF INTEREST**

City Attorney Mattas inquired if any member of the City Council had a Conflict of Interest to disclose it for the record. There were none.

**MOMENTS OF REFLECTION**

Mayor Esteves stated this was to do with the City’s Ethics Program and inquired if there were any comments from the Council.

Councilmember Polanski thanked Finance Director Emma Karlen, the City Manager, Assistant City Manager, and others for the team effort provided in attaining the Government Finance Officers Association’s Budget Presentation Award.

Mayor Esteves thanked the City Council for its work in 2004.

**APPROVAL OF AGENDA**

MOTION to approve the agenda as submitted.

M/S: Gomez, Giordano.

Ayes: 5

## CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Councilmember Giordano, referring to the December 30, 2004, grant application due date on item 8, inquired if the deadline had been missed or if the application had been submitted. Assistant City Manager Blair King suggested as there was no one in the audience from the Engineering Division to answer the question, it be removed from the Consent Calendar allowing the answer to be found prior to the end of the meeting.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 8, in accordance with the staff recommendations.

M/S: Gomez, Polanski.

Ayes: 5

**\*5.  
Odor Control Comprehensive  
Action Plan**

Noted receipt and filed progress report

**\*6.  
Commissioners Recognition**

1. Approved a sit-down dinner at the Embassy Suites, Milpitas on April 20, 2005, to coincide with the nationally recognized Month of the Volunteer.
2. Approved donating the budgeted \$1,500.00 to the Recreation Assistant Program (RAP).
3. Approved usage of monies already appropriated in the 50<sup>th</sup> Anniversary budget for this year's Recognition Event.

**\*7.  
Relay for Life**

Approved Milpitas Relay for Life request for fee waiver and in-kind donation of equipment, supplies, and staffing totaling \$ 3,584.00 for the June 24-25, 2005, Relay for Life event at the Milpitas Sports Center.

**\*10.  
Allied-Barton Security  
Services, Inc.**

Approved Amendment No. 1 to the Allied-Barton Security Services, Inc. (formerly Allied Security, Inc.), contract for an amount not to exceed \$36,182.39, subject to approval as to form by the City Attorney.

**\*11.  
Diversified Maintenance  
Services, Inc.**

Authorized the City Manager to execute Amendment No.1 to the current DMS contract to extend the contract amount by \$5,791.41 for September 2004 janitorial services, subject to approval as to form by the City Attorney.

**\*12.  
Library Off-Site Utility  
Improvements  
(Project No. 8153)**

1. Approved plan and specifications for Phase 1 of the Library Off-Site Utility Improvements (Project No. 8153).
2. Authorized advertising for bid proposals for construction.

**\*13.  
Main Sewage Pump Station  
Demolition (Project No. 6079)**

Approved the contract change order in the amount not to exceed \$93,576.53 to CONCO for demolition of the digester structure, including the testing, and disposal of water and sludge remaining digester tank structure Inc. for the Main Sewage Pump Station Demolition (Project No. 6079), subject to approval as to form by the City Attorney.

**\*14.  
RBF Consulting  
(Project No. 8149)**

Authorized the City Manager to execute the amendment agreement with RBF Consulting for updated environmental and traffic studies for the Milpitas Sports Center project (Project No. 8149), based on the Council approved circulation improvement concept, in the amount of \$26,900.00, subject to approval as to form by the City Attorney.

## PUBLIC HEARINGS

**1.  
Weed Abatement**

Fire Marshal Patti Joki reported at its meeting of December 7, 2004, the Council adopted Resolution No. 7488 declaring weeds on certain properties to be a public nuisance and setting a public hearing for January 4, 2005; notice of the public hearing was published and the County mailed to property owners a notice of the proposed abatement; the purpose of the public hearing was for property owners who object to the removal of the weeds to state their objections before the weeds are removed and the costs made a lien upon the property; and a list of properties to be abated was included in the Council's agenda packet along with a

resolution directing the County Fire Marshal to abate the weeds. Ms. Joki introduced members of the County Agricultural Commissioner's Department Greg Van Wassenhove and Ray Moreno, who were present in the audience.

Mayor Esteves inquired from the time the resolution is adopted, how many days did the property owners have to respond. Agricultural Commissioner Greg Van Wassenhove responded that by adopting the resolution, the property owners were requested to abate weeds by March 1, 2005; then the properties are inspected during fire season to see that they are abated; and if the weeds are not abated, there is a 15 day courtesy notice that the County will mail the property owner for the first time this year.

Councilmember Polanski commented it appeared that many addresses were on the list every year and inquired if there was a record kept, was it a continuing problem, or was there some kind of reminder. Ms. Joki responded the program was beneficial to the City, the County, as well as property owners since these sites had the potential to be a hazard abatement issue; if the County does the abatement, it allows the County to recoup the costs; and the majority of the sites were vacant lots.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Gomez, Livengood.

Ayes: 5

MOTION to adopt Resolution No. 7496 ordering the County Fire Marshal to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

M/S: Gomez, Livengood.

Ayes: 5

## **JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

### **RA1. CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:40 p.m.

### **RA2. ROLL CALL**

Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Giordano, Livengood, and Polanski.

### **RA3. MINUTES**

MOTION to approve the Special Redevelopment Agency minutes of December 14, 2004, including joint meeting with the City Council, as submitted.

M/S: Livengood, Giordano.

Ayes: 4

Abstain: 1 (Polanski)

### **RA4. AGENDA**

Councilmember Livengood stated the City Attorney had advised him that he should abstain from voting on RA5 as he was not part of any of the negotiations that led to the agreement.

MOTION to approve the agenda and consent calendar as submitted.

M/S: Gomez, Giordano.

Ayes: 4

Abstain: 1 (Livengood)

### **\*RA5. Assessor's Parcel No. 022-08-003**

1. Adopted Resolution No. 7479 Certifying Final EIR, adopting the findings related thereto and the Mitigation and Monitoring Plan, and the Statement of Overriding Considerations all as set forth in Agenda Item No. 9 of the City Council Agenda.
2. Approved Purchase and Sale Agreement between Milpitas Redevelopment Agency and Barton P. and Kathleen A. Simmons Revocable Inter Vivos Trust in the amount of \$1,979,775 for property identified as Assessor's Parcel No. 022-08-003, subject to

approval as to form by the Agency Counsel and authorize Chairperson to sign the Agreement and the Certificate of Acceptance on behalf of the Agency and to authorize the Agency Counsel to prepare and submit escrow instructions consistent with the terms of the agreement.

**RA6.  
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 7:41 p.m.

The City Council meeting continued.

**REPORTS OF OFFICERS AND BOARDS**

**City Council**

**2.  
Chamber of Commerce  
Office Space**

Mayor Esteves said this item was continued from the December 21, 2004, Council meeting to consider the Chamber's need for office space when its lease expires in a year or so. The Mayor requested the Council ask staff to work with the Chamber to come up with alternative proposals and come back to the Council for a final decision or approval.

City Attorney Mattas explained that at the last meeting, it was recommended that the Council receive further information from the City Attorney's office regarding the potential for a conflict of interests for Councilmembers who are also members of the Chamber and/or members of the Chamber's Board of Directors; the City Attorney's office looked at the issue and did not find that any member of the Council had a conflict of interest as it related to the item.

Councilmember Polanski inquired if it would be appropriate to have the Economic Development Commission assist staff and the Chamber.

Councilmember Livengood said he would like to hear from the Chamber as to what it felt the City could do to help and what it thought the City's role might be.

Gaye Morando stated the Chamber did not have a time line at this point for moving; everyone knew the Chamber was going to be moving because Super Safeway was coming into the Town Center; the Chamber had been in the Town Center since 1996 and found it to be the best location; the present location was approximately 1350 square feet, but the Chamber did not feel it could afford a location of the same size; when the Town Center was refurbished with the Super Safeway, she understood it would be having the market rate at that time, and it certainly would not be affordable for a non-profit like the Chamber. Ms. Morando further stated they were not looking for financial help at this time; she envisioned the Chamber being located on Main Street, next to the Historical Society or a museum where the people could see the history of Milpitas, or the library; the last time the Chamber moved, the cost was approximately \$4,000; financial help from the City would be good; however, right now, the Chamber was looking for a location at a reasonable rate and any type of assistance in finding one; she saw the Chamber as a business bureau, a resource center; and would like to partner maybe with another non-profit.

Councilmember Giordano said she would like to know if the Council was directing staff to do something, and she was a little confused as to what the request was. Mayor Esteves said the suggestion was to ask staff and the Economic Development Commission to work with the Chamber of Commerce to come up with solutions that would be acceptable to the Council and providing assistance to the Chamber.

Vice Mayor Gomez said he didn't have a problem with forming a task force consisting of the Economic Development Commission and the Chamber with staff support; it sounded reasonable to him.

MOTION to direct staff to work with the Chamber and the Economic Development Commission to find alternatives or proposals addressing the space requirement of the Chamber of Commerce and come back to the Council for approval.

M/S: Esteves, Polanski.

Vice Mayor Gomez inquired if the motion was for staff to take the lead or for a task force to be formed consisting of the Economic Development Commission and the Chamber with staff support. Mayor Esteves stated he would rather have a task force be formed composed of the three groups and for them to decide among themselves who would lead.

Councilmember Livengood said he would like to see the work product include some options, different ideas so the Council would have a wide variety of things to look at and evaluate; maybe it would be a two-step process with a short term and a long term process to be looked at, but he wanted to see a variety of different things explored.

VOTE ON MOTION:

Ayes: 5

### **3. Open Government Ordinance**

Vice Mayor Gomez said this was an ordinance he would like the City Attorney to work on but prior to giving it to the City Attorney, he wanted to bring it to the Council; he was requesting the Council direct the City Attorney to work on such things as formatting it to fit the City's current Municipal Code, include Councilmember Livengood's suggestion of opening up some senior staff meetings to the public, include the issue brought up by the Mayor regarding City employee salaries, format it so that all current City panels (including the Ethics Panel) are included; and bring it back to the Council for review within 30 days and have the report ready for public review within two weeks.

Mayor Esteves asked if Vice Mayor Gomez wanted the Council's comments tonight or wait until the ordinance comes back in draft form. Vice Mayor Gomez said he thought it would be more appropriate to have the final working copy to discuss, and this was only a request for the City Attorney to do that. Vice Mayor Gomez also requested the City Attorney provide a summary, and that summary not be a confidential document, that would provide the public with information on exactly what the ordinance would do.

Mayor Esteves said he also had requested a comparison of the proposed Open Government Ordinance with the City's existing Open Government Ordinance to know what the differences were.

Councilmember Polanski said she hoped that if the Council recommended to pass this onto the City Attorney to be brought back for discussion, the Council would be provided with a copy of the current Ordinance; she would be voting no on the motion as she believed the Open Government Ordinance that took effect in August 2004 could be enhanced and amended with many of the things that had been put in the proposed ordinance; she would have preferred to have the existing ordinance amended and updated; and based upon what she had reviewed, the request was to repeal and replace and because of that, she would be voting no.

Vice Mayor Gomez requested verification that the comparison the Mayor requested was a public document. City Attorney Mattas responded it was a public document.

Mayor Esteves said he wanted to keep an open mind; the City currently had a very adequate Open Government Ordinance; he had a few comments but felt the Council should go through the process of reviewing the amendments.

MOTION to direct the City Attorney to take this Open Government Ordinance, format it to fit into the City's Municipal Code, include Councilmember Livengood's suggestion regarding senior staff meetings being open to the public, include the current Ordinance regarding City employee salaries within this ordinance, ensure that this Ordinance applies to the Ethics Panel, revise the Open Government Commission so that it deals with all good Government issues as

one of its duties, and also provide a summary which will be a public document, bringing it back on a Council agenda within 30 days and having the report ready within two weeks.

M/S: Gomez, Livengood.

City Attorney Mattas requested clarification of having it ready within two weeks and inquired how the Council wanted to receive the report. Vice Mayor Gomez stated his preference was that the Council receive it and it also be made available publicly.

VOTE ON MOTION:

Ayes: 4

Noes: 1 (Polanski)

#### **4. Council/Commission Appointments**

Vice Mayor Gomez reported at the Council's December 7, 2004, meeting, the Council provided direction that he and Councilmember Livengood serve on a subcommittee which would make recommendations regarding City Commission liaison appointments, City Commission appointments, and Committee assignments; and the subcommittee's recommendations were in the Council's agenda packet.

Mayor Esteves said he just received the list today and was not able to attend work hour meetings between 8:00 a.m. and 5:00 p.m.; he could be an alternate; referring to the VTA/BART Policy Advisory Board, which meets at 3:00 p.m. in Milpitas, and the Silicon Corridor PAB at 3:00 p.m., requested one of his colleagues volunteer in those two spots. Councilmember Livengood volunteered for both. Mayor Esteves said the VTA Board of Directors had a scheduled meeting on January 6, 2005, at 5:30 p.m. Councilmember Livengood said he had that meeting on his calendar and would be attending the meeting.

Councilmember Polanski said she had sent information to the Mayor prior to the first meeting in December regarding her work hour unavailability; she had not been contacted regarding having any conflicts or issues; referring to the Transportation page, said she had advised the Mayor that because of a change in her work hours and work assignments, she would not be able to attend any meetings between 8:00 a.m. and 5:00 p.m.; she would not be able to attend the 4:00 p.m. Transportation Policy Advisory Committee meeting; also, she would not be able to be the alternate to the BART Policy Advisory Board. With respect to the Terrace Gardens Board of Directors, there would be information forthcoming to the Council in the next couple of months on a proposal (there was a subcommittee working on the information to kind of remove the City from its direct involvement with the Terrace Gardens Board of Directors and one of the proposals would be to discontinue a Council representative and the City Manager or designated staff), and asked the Council if she could continue that until the proposal was brought to the Council.

Vice Mayor Gomez volunteered to take the VTA Policy Advisory Board assignment and the alternate position on the VTA/BART Policy Advisory Board.

Councilmember Polanski said she and Mayor Esteves served on the CIP subcommittee, however, she did not see it listed as one of the subcommittees; this subcommittee meets quarterly or as needed; and she was willing to continue to serve on that subcommittee. Vice Mayor Gomez stated that subcommittee could remain as it was with Mayor Esteves and Councilmember Polanski.

Councilmember Livengood, addressing the City Committees and Subcommittees, inquired of the City Attorney if these were all supposed to be subject to the Brown Act, and as such, required to have agendas and minutes. City Attorney Mattas responded they appeared to all be standing committees that, under the Brown Act, would require the notice requirements.

Councilmember Livengood said he wanted to make sure everything was uniform and commented that he had never read minutes from the City/School Communication Committee or the 50<sup>th</sup> Anniversary Committee and inquired if those were supposed to fall under the Brown Act. City Attorney Mattas responded he believed some of those just identified were not just solely Council Subcommittees; if they were standing Committees with continuing



subject matter jurisdiction, then generally they were required to have agendas; if they were ad hoc committees formed for a short period of time without continuing subject matter jurisdiction, those are not required under the Brown Act to be noticed as meetings.

Councilmember Livengood inquired if the City/School Communication Committee was required to have agendas, minutes, and noticing. Councilmember Polanski said this Committee did have agendas, the meetings were held every other month and was alternately hosted by the City and School District; the host put out the agenda; and were open to the public.

Councilmember Livengood, addressing the City Attorney, inquired if all the Subcommittees were required to provide minutes for the public or for the Council. City Attorney Mattas said the Council could direct that if that was the way it wished to proceed; if the meetings were agendaized, they would not be required to have minutes. Councilmember Livengood clarified that he wished to see consistency, whether it be having agendas and/or minutes or not having agendas and/or minutes.

Vice Mayor Gomez inquired of the City Attorney if the standing committees were in compliance with the Brown Act if minutes were not taken and published and/or noticed. City Attorney Mattas said he would like to take a look at the issue and report back to the Council.

Councilmember Giordano, addressing Councilmember Polanski's concern over Terrace Gardens since it was her appointment, said she didn't know if she wanted to defer it to the Subcommittee that assigned the members to the various committees; if it was going to be disbanded and there would not be a representative from the Council, she did not have a problem; however, she was concerned when it was going to take place or if it really was going to take place and said she would like to get some direction.

Councilmember Livengood commented that as he did not know anything about the issues Councilmember Polanski brought up about the City extracting itself from Terrace Gardens completely, he would need to get some type of report from staff about why the City would do that and the ramifications of that; the taxpayers put millions of dollars into that facility; he recognized that it stood alone financially, however, it was built with taxpayers money and, therefore, he tended to believe the taxpayers should still have some connection to it; his take would be to leave things as they were now in that regard until the Council heard from the City Attorney what the ramifications were, who has control, and can they say they no longer want City involvement.

Councilmember Polanski clarified there was going to be a complete proposal brought to the Council; it would need to be reviewed by the City Attorney for the Council; the Attorney for the Terrace Gardens Board was reviewing it; a Subcommittee had been working on proposals for Terrace Gardens for several months and they planned to bring that forward at the January Board meeting; and her request was to allow her to stay on until the proposal was brought forward; if it were rejected by the Council, she did not have a problem stepping away.

Councilmember Polanski, referring to the Santa Clara County Emergency Preparedness Council, pointed out there was no date or time it met and looking at the calendar, it looked like they met the first Thursday at 12:00 noon; therefore, she would not be able to represent the City at the Santa Clara County Emergency Preparedness Council. Mayor Esteves said he would try to take that meeting.

Councilmember Giordano said she was still very unclear about Terrace Gardens. Mayor Esteves said his understanding was that it would be left the way it currently was.

Councilmember Livengood said this appeared to be an imminent decision; the Council would get a report back from staff right away on what the ramifications of this were; and, at least for January, Councilmember Polanski would go to that meeting and represent the City; then the Council would have a report back that would give it an idea about the future and at that point,

if the City was no longer involved, no one would need to be assigned; if the City was still involved, Councilmember Giordano would assume the assigned role.

Vice Mayor Gomez, addressing that both his name and Councilmember Giordano's name were listed under the item, clarified he put a call into the City Attorney requesting this item and that the Council Subcommittee be discussed, and, as a separate item, it looked like Councilmember Giordano requested that the handbook issue be discussed; therefore, there were two separate items included under one number.

City Attorney Mattas clarified that he had received two separate requests; a specific request from Councilmember Giordano to make sure the item was on the agenda; and then Vice Mayor Gomez, as a representative of the Subcommittee, and he talked prior to the item being placed on the agenda to make sure it was on the agenda; and it was pointed out to him by Vice Mayor Gomez that the Council had directed that the item come back after the Subcommittee had made its recommendations; therefore, when he prepared the staff report, he identified it as a Council initiated item from Vice Mayor Gomez and Councilmember Giordano; and apologized for any confusion it caused.

MOTION to approve the City Council City assignments as amended.

M/S: Livengood, Giordano.

Mayor Esteves commented that before this new procedure, Councilmembers usually continued with the assignments they had and new people were given the assignments from vacancies; he was hopeful that everyone would be conscious of their assignments and he would also expect a report on attendance.

VOTE ON MOTION:

Ayes: 5

#### **City Council Handbook**

Councilmember Giordano said she had originally intended to pattern the approval process for the Commissioners or their recommendations based on the Planning Commission process; her understanding from the City Attorney was that it was not the proper way as it was prohibited by State law; her idea was rather than having an ordinance or a resolution passed, which would not be appropriate, to include the City's policy change in the Council Handbook.

City Attorney Mattas said given that the Council had elected to create a Subcommittee to make recommendations that come back to the Council via the Mayor and the Council, he suggested the Council Handbook section be updated related to appointments to Boards, Commissions, and Subcommittees to reflect the process if the Council desired to continue in the same process that was used to arrive at the recommendations this evening; and if the Council wished to do that, it would need to provide direction to staff to revise the Council Handbook to reflect that.

Mayor Esteves suggested that the Handbook be updated to reflect the most current practice. City Attorney Mattas stated that was the proposal currently before the Council; and it would be brought back for Council approval.

Councilmember Polanski said she thought one of the important aspects of the Handbook was for it to be kept current with current practices so any time a member of the public or someone new came to the Council or anyone else, they would have that information; she agreed that if it was going to be the practice of this Council, it should be included in the Handbook.

MOTION to direct staff to modify the City Council Handbook to reflect the role of the City Council appointments by Subcommittee.

M/S: Giordano, Polanski.

## **Commission Vacancies Outreach**

City Clerk Gail Blalock said she had previously provided the Council with a memo on what staff currently does when there is a commission vacancy and added that vacancies were also posted on Channel 15 in addition to the City's website.

Councilmember Giordano said she had reviewed the December 17, 2004, memo and did not feel her request had been taken very seriously and pointed out where she saw the problems existed: The City's website places the Commission vacancies on 1 of 5 rotating pages; once an individual finds the page, it does not fully explain all vacancies and the work of the Commissions in one place, and it becomes too cumbersome; the website still shows that Planning Commission applications are being accepted; therefore, the website was not being updated as frequently as it should be; the motion was made last meeting for the Council to interview the nine existing applicants and close that down so it should have been made clear on the website; the list of Commissioners and their current terms did not appear to be current; we need to remember, too, that all residents did not have access to the web; we look at the Milpitas Post to reach out to the entire community but she did not feel this would be the outreach that she would want to see (her understanding of where the Post delivers, which was not to all single family residents and not to multi-family homes); after a meeting with the editor and finding out about the distribution of the Post, she did not believe it was going to cover the areas that needed to be covered; as we use existing Commissioners or liaisons to do outreach, as alluded in the memo, felt it just does not involve enough individuals and thought the City's appeal to other residents to come out and serve on Commissions needed to be broadened; she had asked for specific ideas on how to broaden the City's outreach and did not see anything in the memo that added to the current process or any current ideas; she would like staff to look at the request again, look at what other cities/counties do to inform residents of upcoming Commission vacancies, and also the responsibility of the Commission, and would like to see a survey of other jurisdictions as well as new ideas to get residents involved (i.e., to have a posting in the utility bills or maybe a listing of vacancies on the Council agendas). Councilmember Giordano said she felt the process needed to be revisited and staff come back with a broader list of possibilities.

Councilmember Livengood said he agreed with most of what Councilmember Giordano mentioned; he was particularly concerned about the last go around there was only one applicant for the Planning Commission and in the past there had been upwards of 19 or 20 people applying for one seat; it was very disconcerting to him and indicated there was a problem; he agreed with the need to come back with a much more aggressive list of recommendations; he had received information from staff over the years that when they do direct mail to people in Milpitas, they get a much better response than when they advertise in the Milpitas Post; the Post doesn't go to everybody's house and people do not depend on newspapers as much as they used to get their information; suggested the City Newsletter be a source for the information; newspapers in general do not have the readership they had at one time; there was a need for new fresh ideas on how we can get people into our system and get them involved and interested in serving; and suggested staff talk to people that were in the business of direct mail or things that tend to be a little more read by people.

Mayor Esteves said it was always great to be more exhaustive and try to reach everybody, but on the other hand, one facet that must be considered all the time is the cost effectiveness; we could invest so much, but how much is the return; if you're going to consider other alternatives, he wanted to look at the fiscal impact (the cost effectiveness) of that action. Mayor Esteves suggested using newspapers in other languages or regular mail; and he had no problem trying to reach a higher number if there was the measure of cost effectiveness in whatever action was done.

Councilmember Livengood re-emphasized that when you start looking at the community of Milpitas and the way people socialize and gather, a lot of them gather and socialize at community centers; he felt that would be a good place to reach out to people could be done pretty cost effectively.

Kathryn Manento stated cost effectiveness was the key point; felt the utility billing was a great way to reach the community; word by mouth was a dynamic force; those in responsibility had to realize that participation still becomes part of leadership; people are bound to be more motivated by those who lead us; and we have to lead in a way that inspires people to want to follow; have to remember when such responsibility has been given to us, we also must use that with such a delicate glove that others are compelled to follow us; so, it's not racking so much of your brain to wonder why it was only one person who came forward, but racking your brain to wonder what did I do to discourage people because she heard a lot of talk about how disappointing people were in the campaign.

MOTION to redirect staff to come back with a new list of ideas and new suggestions on ways to broaden the City's outreach to the community for Commission vacancies and appointments.

M/S: Giordano, Livengood.

Mayor Esteves asked that everyone please look at the openings, and said the Council encourages you to volunteer to come forward and be part in making the City a different place (a best place in this area).

VOTE ON MOTION:

Ayes: 5

## **NEW BUSINESS**

### **8. MTC Regional Signal Retiming Program Grant Application**

Acting City Manager Lawson stated the application was submitted to meet the deadline; this was a formal resolution of application; if not passed, the application would be withdrawn.

MOTION to approve submittal of a grant application to the Metropolitan Transportation Commission for the 2005 Cycle of Regional Signal Timing Program Grant.

M/S: Gomez, Giordano.

Ayes: 5

## **RESOLUTIONS**

### **9. North Main Street Development Projects EIR**

City Attorney Mattas clarified that Councilmember Livengood would be abstaining from the consideration of the EIR only because one project considered in the EIR was the Senior Housing Project he had previously abstained on. Councilmember Livengood apologized for not announcing his abstention at the beginning of the meeting but he had been unaware and left the dais and the Council Chambers.

Senior Planner Dennis Carrington reported the North Main Street Development Project EIR was an Environmental Impact Report that addressed several projects currently underway by the City on North Main Street consisting of a new 60,000 square foot Community Library, which would incorporate the historic Milpitas Grammar School, 100 senior housing units, a 60,000 square foot Santa Clara County Valley Health Center, two parking garages, and streetscape and circulation improvements. Mr. Carrington noted the EIR was prepared by LSA Associates and introduced Lynette Dias and Amy Paulson of LSA, who were in the audience to answer any questions the Council may have. Mr. Carrington further reported the Draft EIR was circulated for public review from October 18 through December 1, 2004; comments were received from six agencies (VTA, City of San Jose, Department of Toxic Substances Control, PG&E, Santa Clara County, and the Santa Clara Valley Water District); the Parks, Recreation and Cultural Resources Commission recommended that the Council certify the EIR on December 6, 2004; and the final EIR responding to comments was circulated for review on December 22, 2004.

Mr. Carrington reviewed the main conclusions of the EIR that the North Main Street Development Project would have significant and unavoidable impacts to traffic, air quality, and cultural resources and explained the significant unmitigable cultural impact concerning

the relocation on site of the DeVries home and the demolition of the home's contributing outbuildings and plantings.

Mr. Carrington further reviewed the Statement of Overriding Considerations describing the project's overriding public benefit, which was attached to the resolution provided in the Council's agenda packet; a couple of the important findings that would be considered in the Statement of Overriding Findings would be that the project would result in a Library that will be better able to offer educational services to its patrons, will be better able to accommodate expanding collection than the current Library; and that the project would result in the construction of senior housing that would provide housing for very low and extremely low income seniors (a demographic group that was currently underserved by affordable housing).

Mayor Esteves asked Mr. Carrington go back to the slide regarding the adverse cultural impact on the Grammar School because of building additions to it (historical integrity) and commented this was the first time he had heard about this and asked why it was.

Acting Planning Manager James Lindsay responded when the Environmental Impact Report was done, the Library had not reached this stage of design and the Environmental Impact Report was working off of the Master Plan document; the Environmental Impact Report looked at a worse case scenario and that allowed the Council flexibility to choose different design options; as it happened, the Conceptual Design preceded this and its to avoid any type of re-circulation issues; staff decided to go ahead with the more conservative finding; if circumstances were to change and that design proved infeasible for whatever reason, the document allowed the Council to modify it in any way; and this gave the Council the most flexibility by making this finding.

Mayor Esteves said he was glad to hear that because this was earlier than the Conceptual Design of the Library; but on the other hand, asked if the Council could have a confirmation from the designer/architect that we have somehow mitigated this because that was the intent of the Design as well. Mr. Lindsay said the Project Manager, Mark Rogge, was in the audience and noted that this finding was a more conservative view, and he believed there was a report from the architectural firm on the Secretary's findings.

Project Manager Mark Rogge said this was a very conservative look at it; however, the actual design did address the historic structure, and the architect did find that they would be complying with the Secretary of Interior Guidelines; and, therefore, there would be no significant impact as far as that went; the Finding within the Environmental Impact Report was perfectly acceptable, and it did make it very conservative; if there were differing opinions out there as to whether or not it satisfied or not, staff did have a letter from its expert Historical Preservation Consultant indicating they believed that the current Concept Design did not pose any significant impact on the historic building, and there was a concurring statement from the City's prior historical consultant on that.

Mayor Esteves, referring to a proposal on one of the parking garages to build a banquet facility on top (a 600 square feet facility), inquired if that was considered in the EIR. Mr. Lindsay responded it was; the purpose of the Environmental Impact Report was to provide almost an extreme build-out situation and to provide the Council as much flexibility as possible; the parking structure west (as it was now referred to as), which would be the parking structure that would primarily serve the Health Clinic, anticipated trip generation from a community center, a restaurant, banquet facility, as well as additional retail space; so, it did consider a fairly significant building program (one which provides the most flexibility for the Council in its ultimate decision making of what will happen with the structures).

MOTION to adopt Resolution No 7497 certifying the Environmental Impact Report, making CEQA findings, adopting the Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Plan.

M/S: Gomez, Polanski.

Ayes: 4

Abstain: 1 (Livengood)

Assistant City Manager Blair King announced this was his last meeting with the Council and he wanted to mention that for the last 3-1/2 years, it had been his privilege to serve the citizens of Milpitas, he appreciated each and every one on the Council for the respect shown him and for his opportunity to work with the Council, Milpitas had a wonderful community and the City had a wonderful staff, and it had been his pleasure to be employed for the City of Milpitas.

#### **ADJOURNMENT**

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:00 p.m. in memory of the victims of the Tsunami disaster and in honor of those providing aid to the survivors at 9:00 p.m. to 6:00 p.m., January 11, 2005, for Planning Commission interviews

Gail Blalock  
City Clerk

**The foregoing minutes were approved by the City Council as submitted on January 18, 2005.**

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Gail Blalock, City Clerk

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Date